

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1483 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE R.R.JAIN

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

DHULAJI ODHRAJI & OTHERS

Appearance:

A.G.Uraizee, APP for the appellant-State.
MR SHANTILAL M SHAH for Respondent No. 1.
Mr.J.M.Panchal & Mr.A.K.Chitnis for respondents.

CORAM : S.M.Soni and R.R.Jain,JJ.

Date of decision: 05/08/96

ORAL JUDGEMENT(Per S.M.Soni,J.)

This appeal is directed against the judgment and order of 14th August,1984 passed by the Additional Sessions Judge, Mehsana in Sessions Case no.47 of 1984 whereby the learned Judge has recorded order of acquittal.

This Court while admitting the appeal has dismissed the same against original accused nos.10,11,14 and 16 who were respective respondents in the appeal. This appeal, therefore, now survives for original accused-respondents except those nos.10,11, 14 and 16. Heard learned A.G.P. Mr. Uraizee. He has taken us through the whole record. It is the endeavour of the learned A.G.P. to show that the learned Additional Sessions Judge has erred in not holding the identity of the accused as the assailants, and therefore, the conclusion arrived at by the learned Judge that they are not the persons who committed the offence is an erroneous one.

We have perused map Exh.44 and the Panchnama of the scene of offence Exh.48. From both these documents it is not clear as to what was the nature of Tapna and to what degree of light it emitted at the relevant time. It is the case of the prosecution that all the accused were identified in the light of Tapna. It is not the case of the prosecution that the accused were known and/or therefore identified despite night and there being moonlit night. This apart, when the learned Additional Sessions Judge has appreciated the evidence keeping in mind that real genesis of the incident is not coming forth from the prosecution side. Because of this, the learned Judge is on guard not to accept the version of the witnesses even though they are injured but becomes suspicious.

It is settled principle of law that while considering the acquittal appeal, the High Court should and will always give proper weight and consideration to the matters (1) the view of the trial Judge as to the credibility of witnesses, (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial, (3) the right of the accused to the benefit of any doubt and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by the Judge who had the advantage of seeing the witnesses(Sheo Swarup AIR 1934 PC p.227). Keeping these principles in mind and, in particular, when the learned Judge has considered certain very important discrepancies in FIR and the prosecution non putting forth the real genesis, this Court would not like to interfere with the order passed by the learned Judge.

In view of this fact, the appeal is liable to be dismissed and is hereby dismissed. Bail bonds shall stand

cancelled.

sf-sms